


CONFIDENTIAL



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

MAR 7 1983

MEMORANDUM FOR Marc Leland

FROM: Lionel H. Olmer 

SUBJECT: EAA: Background Papers for Thursday, 10 March
SIG-IEP Meeting

Per your request, Attachments 1 and 2 are the proposed Administration Bill and accompanying section by section analysis which the Commerce Department submitted to OMB today.

Seven issues relating to the renewal of the EAA were raised at the last SIG-IEP meeting (see Attachment 3). Consistent with the guidance received at that meeting and following, we have proposed a bill that addresses these 7 issues in the following fashion:

1) Extraterritoriality

- o no change has been made to substantive provisions of the current Act;
- o a policy declaration is included that the impact of controls on business in allied or other friendly countries should be minimized;

2) Business Protection Against Export Controls

- o a modified version of the contract sanctity provision for agricultural commodities (set forth in the Futures Trading Act of 1982) is included;
- o no provision for compensation for losses or OPIC insurance is included;
- o no provision for a congressional veto is included;

3) Energy Dependence Controls

- o no policy or other provision on this point is included;

4) Exports to Embassies

- o no substantive provisions are added to the Act;
- o a policy declaration is included calling for a study of the issue by the Secretaries of Commerce, Defense, State and the Attorney General;

Not referred to DOC. Waiver applies.



Classified by Lionel H. Olmer
Declassified on 3/8/93

CONFIDENTIAL

CONFIDENTIAL

- 2 -

5) Import Control Authority

- o provisions authorizing such controls, similar to those proposed by Senator Heinz, are included; however, the provisions are bracketed and it is noted that only the Departments of Commerce and Defense support their inclusion;

6) Antiboycott

- o no change is made to the current Act;

7) Enforcement to Customs

- o no change is made to the current Act.

In addition to the attached documents, the SIG-IEP members should have a copy of the annotated options paper I sent to you last week reflecting the conclusions reached at the last meeting of the Under Secretaries held on Monday, February 28 also attached.

Attachments

CONFIDENTIAL with CONFIDENTIAL ATTACHMENTS

CONFIDENTIAL

CONFIDENTIAL

A BILL

To amend and reauthorize the Export Administration Act of 1979.

Be it enacted by the Senate and the House of Represen-
tatives of the United States of America in Congress assembled,

AMENDMENTS TO FINDINGS

SECTION 1. Section 2 of Pub. L. No. 96-72 is amended as follows:

(1) by striking in paragraph (3), "exports, which would strengthen the Nation's economy.", and substituting in lieu thereof, "export policies, consistent with the economic, security, and foreign policy objectives of the United States.";

(2) by striking paragraph (5), redesignating paragraph (4) as paragraph (5), and redesignating paragraphs (7)-(9) as paragraphs (8)-(10), respectively; and

(3) by inserting after paragraph (3):

CONFIDENTIAL

"(4) Availability from foreign sources of goods and technology that are controlled by the United States to protect its national security can adversely affect that security."; and

(4) by inserting after paragraph (6),

"(7) The export of goods and technology that contribute to enhancing the military and industrial capability of individual countries or combinations of countries whose actions or policies are adverse to the interests of the United States has increased the threat to the security of the United States, its allies, and other friendly nations and has led those nations to increase their defense expenditures.".

AMENDMENTS TO DECLARATION OF POLICY

SECTION 2. Section 3 of Pub. L. No. 96-72 is amended as follows:

(1) by striking in paragraph (3) the word "and";

(2) by deleting in paragraph (3) the period which ends the sentence, and adding in lieu thereof, ", and (C) to

CONFIDENTIAL

CONFIDENTIAL

negotiate bilaterally or multilaterally to eliminate, whenever possible, the foreign availability of goods and technology sufficient in quantity and comparable in quality with those controlled or proposed to be controlled for national security purposes in the United States."

(3) by redesignating paragraphs (10) and (11) as paragraphs (11) and (12), respectively, and inserting after paragraph (9):

"(10) It is the policy of the United States to negotiate agreements with neutral and non-aligned countries with whom we have common interests to restrict the export of U.S. goods and technology that are controlled for national security reasons."; and

(4) by adding new paragraphs (13) and (14) as follows:

"(13) It is the policy of the United States when imposing foreign policy controls seek to minimize the impact of those controls, to the extent consistent with their underlying purpose, on contracts in existence and on the business activities in allied or other friendly countries.

CONFIDENTIAL

CONFIDENTIAL

"(14) It is the policy of the United States to develop licensing mechanisms to minimize the burdens placed on U.S. export trade, particularly (1) U.S. export trade with COCOM, Australia, and New Zealand, and (2) trade between U.S. companies and their subsidiaries and licensees in other than proscribed destinations. The Secretary of Commerce shall periodically report to Congress on the results of this effort.".*

* [This exact language has not yet been reviewed on an interagency basis, but reflects discussions held at the meeting of Under Secretaries on Monday, February 28, 1983.]

AMENDMENTS TO GENERAL PROVISIONS

SECTION 3. Section 4 of Pub. L. No. 96-72 is amended as follows:

(1) by deleting in paragraph (2) in subsection (a) "A qualified general license," and substituting in lieu thereof "Licenses";

(2) by modifying subsection (b) to read as follows:

CONFIDENTIAL

CONFIDENTIAL

"(b) Control List. -- The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the 'Control List') indicating license requirements for exports to various countries of destination subject to control under this Act."; and

(3) by deleting in subsection (c) "significant" and substituting in lieu thereof "sufficient".

AMENDMENTS TO NATIONAL SECURITY CONTROLS

SECTION 4. Section 5 of Pub. L. No. 96-72 is amended as follows:

(1) in paragraph (1) of subsection (a), by adding "(A)" following "(1)" and by adding new subparagraph (B) as follows:

"(B) No provision in this Act shall bar the President from imposing unilateral controls on technology and goods of military significance proposed for multilateral control even when a foreign availability determination has been made, provided the President determines that the absence of export controls

CONFIDENTIAL

CONFIDENTIAL

under this section would prove detrimental to the national security of the United States.";

(2) by deleting subparagraph (B) in paragraph (2) of subsection (a) and by striking "(A)" before the first sentence of paragraph (2) of subsection (a);

(3) by deleting the word "commodity" in the first sentence of paragraph (1) in section (c), and by deleting the second sentence in that paragraph and substituting in lieu thereof:

"The Secretary shall identify on the control list the controls under this section that apply to goods, technology, or destinations.";

(4) by modifying the heading of subsection (d) to read "Militarily Critical Goods and Technologies.";

(5) by modifying subparagraph (B) of paragraph (2) in subsection (d) to read "keystone materials and manufacturing, inspection, and test equipment, and";

(6) by deleting the word "become" in paragraph (5) of subsection (d), and substituting in lieu thereof "be", by

CONFIDENTIAL

CONFIDENTIAL

deleting the word "commodity", and by inserting in the same paragraph "and regulations" after "the control list";

(7) by redesignating paragraph (6) of subsection (d) as paragraph (7), and inserting after paragraph (5):

"(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls over the products of that technology and equipment.";

(8) by deleting subsection (e) in its entirety, and redesignating subsections (f)-(l) as (e)-(k), respectively;

(9) in paragraph (1) of subsection (e), as redesignated, by striking "sufficient quality" and substituting in lieu thereof "comparable quality";

(10) in paragraph (2) of subsection (e), as redesignated, by striking "sufficient quality" and substituting in lieu thereof "comparable quality";

CONFIDENTIAL

CONFIDENTIAL

(11) by redesignating paragraphs (3)-(6) in subsection (e) as (4)-(7), respectively, and adding a new paragraph (3) as follows:

"(3) The mere capacity of a foreign country to produce items of sufficient quantity and comparable in quality with those controlled by the United States does not, in and of itself, constitute foreign availability.";

(12) by striking in the first sentence of paragraph (5) of subsection (e), as redesignated, "take steps to initiate" and substituting in lieu thereof "actively pursue";

(13) in section (f), as redesignated,

(a) by striking "and qualified general licenses" in the first sentence,

(b) by inserting at the end of the first sentence, "The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology the anticipated needs of the military of countries to which exports are controlled for national security purposes.", and

CONFIDENTIAL

CONFIDENTIAL

(3) by deleting from the existing second sentence "by the latest such increase" and substituting in lieu thereof "by the regulations";

(14) by striking in paragraph (6) of subsection (g), as redesignated, "(f)(1)", and substituting in lieu thereof "(e)(1)";

(15) by striking in paragraph (1) of subsection (h), as redesignated, "agreement of the Committee," where it appears the second time and substituting in lieu thereof "list,";

(16) by striking in paragraph (2) of subsection (h), as redesignated, "discussing export control policy issues and issuing policy guidance" and substituting in lieu thereof "providing guidance on export control policy issues";

(17) by striking in paragraph (3) of subsection (h), as redesignated, "reduce" and substituting in lieu thereof "modify";

(18) by inserting in paragraph (4) of subsection (h), as redesignated, after "effective procedures for" the words "administering and";

CONFIDENTIAL

CONFIDENTIAL

(19) by inserting after paragraph (4) of subsection (h), as redesignated, paragraphs (5) and (6) as follows:

"(5) Agreement to improve the International Control List and minimize the approval of exceptions to that list, strengthen international enforcement and cooperation in enforcement efforts, provide annual funding for COCOM, and improve the structure and function of the COCOM Secretariat by upgrading professional staff, translation services, data base maintenance, communications and facilities.

"(6) Agreement to strengthen COCOM so that it functions effectively in controlling export trade in a manner that better protects the national security of each participant to the mutual benefit of all.";

(20) by inserting in subsection (j), as redesignated, after "other countries" the words ", including neutral and non-aligned countries with whom we have common interests", by striking "policy" and substituting in lieu thereof "policies", and by striking "section 3(9)" and inserting in lieu thereof "sections 3(9) and 3(10)";

CONFIDENTIAL

CONFIDENTIAL

(21) by inserting after "Munitions List" in paragraph (2) of subsection (k), as redesignated, "or the military use of any item on the COCOM List"; and

(22) by inserting a new subsection (1) as follows:

"(1) Study on Sales to Embassies.--The Secretary of Commerce, assisted by the Attorney General and the Secretaries of Defense and State, shall conduct a study on the extent to which the transfer of goods and technologies within the United States to embassies and affiliates of countries to which these goods and technologies are controlled for national security purposes may be rendering U.S. export controls ineffective. The results of this study shall be reported to Congress within one year."

AMENDMENTS TO FOREIGN POLICY CONTROLS

SECTION 5. Section 6 of Pub. L. No. 96-72 is amended as follows:

[(1) by inserting after the first sentence in subsection (a):

CONFIDENTIAL

CONFIDENTIAL

"Whenever the authority conferred by this section is exercised with respect to a country, the President shall prohibit all imports from that country to the United States and its territories and possessions, subject to such exemptions for specified goods and technology as the President may prescribe." ;]*

* [THIS PROVISION TRACKS SECTION 6 OF S. 397 (HEINZ), AND IS SUPPORTED BY THE DEPARTMENTS OF COMMERCE AND DEFENSE.]

(2) by deleting in subsection (c) "with such affected United States industries as the Secretary considers appropriate," and substituting in lieu thereof "as appropriate with affected United States industries";

(3) by inserting after the first sentence in subsection (f) "This section also does not authorize export controls on donations of articles, such as food and clothing, intended to be used to relieve human suffering, except to the extent that the President determines that such donations are in response to coercion against the proposed recipient or donor." ;

(4) by striking in the first sentence of subsection (k) the word "commodity";

CONFIDENTIAL

CONFIDENTIAL

(5) by striking the second sentence of subsection (k) and substituting in lieu thereof "The Secretary shall clearly identify on the control list the controls under this section that apply to goods, technology or destinations."; and

(6) by adding at the end of section 6 a new subsection as follows:

"(1) Sanctity of Contract.--Notwithstanding any other provision of this Act, the President shall not prohibit or curtail the export of any good or technology imposed for reasons of foreign policy under an export sales contract (1) entered into before the President announces an action that would otherwise prohibit or curtail the export of the good or technology, (2) the terms of which require delivery of the good or technology within two hundred and seventy days after the date of suspension of trade is imposed, except where the President determines that the absence of foreign policy controls on these exports would prove detrimental to the overriding national interests of the United States".*

* [This tracks the language for agricultural exports found in section 238 of Pub. L. No. 97-444, the Futures Trading Act of 1982, except that the last clause has

CONFIDENTIAL

CONFIDENTIAL

been altered so that the President need not declare a national emergency nor Congress declare war before the Presidential override in this section could be invoked.]

[Alternative ending 1: "except that the President may prohibit or curtail the export of any good or technology during a period for which the President has declared a national emergency or for which Congress has declared war."]

[Alternative ending 2: "except where in an emergency the President determines that the absence of foreign policy controls on those exports would prove detrimental to the national interest of the United States."]

AMENDMENTS TO SHORT SUPPLY CONTROLS

SECTION 6. Section 7 of Pub. L. No. 96-72 is amended by deleting in their entirety subsections (c)-(f) and (h)-(j), and redesignating subsection (g) as subsection (c).

[THIS SECTION LEAVES UNTOUCHED THE SPECIAL SHORT SUPPLY PROVISIONS RELATING TO AGRICULTURAL COMMODITIES. TO BE CONSISTENT WITH THE OTHER SIG-IEP DECISIONS ELIMINATING SPECIAL SHORT SUPPLY PROVISIONS FOR NON-AGRICULTURAL

CONFIDENTIAL

COMMODITIES, THE PROVISION RELATING TO AGRICULTURAL
COMMODITIES SHOULD ALSO BE DELETED.]

AMENDMENTS TO PROCEDURES FOR PROCESSING
EXPORT LICENSE APPLICATIONS

SECTION 7. Section 10 of Pub. L. No. 96-72 is amended as
follows:

(1) by striking in the first sentence of subsection (b)
"10" and substituting in lieu thereof "14";

(2) by striking in subsection (c) "90" and substituting
in lieu thereof "60";

(3) by striking in paragraph (2) of subsection (e)
"30-day" and substituting in lieu thereof "15-day";

(4) by inserting in paragraph (3) in subsection (f)
after "the policies set forth in section 3 of the Act which
would be furthered by denial," the following:

"what, if any, modifications in or restrictions on
the goods or technology for which the license was sought

CONFIDENTIAL

CONFIDENTIAL

would allow such export to be compatible with controls imposed under this Act,"; and

(5) by striking in paragraph (2) in subsection (g) "30" and substituting in lieu thereof "45".

AMENDMENTS TO VIOLATIONS PROVISIONS

SECTION 8. Section 11 of Pub. L. No. 96-72 is amended as follows:

(1) by inserting in paragraph (a) after "violates" the following "or conspires or attempts to violate";

(2) by deleting in paragraph (1) in subsection (b) "exports anything contrary to" and substituting in lieu thereof "violates or conspires or attempts to violate";

(3) by inserting in paragraph (1) in subsection (b) after "benefit of" the following "or that the destination or intended destination of the goods or technology involved is";

(4) by deleting in paragraph (1) in subsection (b) "or" after "national security" and by inserting in lieu thereof

CONFIDENTIAL

CONFIDENTIAL

"purposes as identified by Subsection 5(b) of this Act or any country to which exports are restricted for";

(5) by inserting after paragraph (2) in subsection (b) the following paragraphs:

"(3) Whoever possesses any goods or technology

(A) with the intent to export them contrary to this Act or any regulations, orders, or license issued thereunder; or

(B) knowing that they would be so exported,

shall be subject to the penalties as provided in subsection 11(a), except for a national security violation which would be subject to the penalties as provided in subsection 11(b)(1).

"(4) Nothing in this subsection shall limit the power of the Secretary to promulgate regulations under this Act.";

[(6) by inserting after paragraph (2) in subsection (c) the following new paragraph:

CONFIDENTIAL

CONFIDENTIAL

"(3) Whoever violates any provision of this Act or any regulation, order, or license issued thereunder, or whoever violates any export control provision established by the group of countries known as the Coordinating Committee or any export control laws or regulations of a foreign country that implements such a provision may be subject to such controls on the importing of its goods or technology into the United States or its territories and possession as the President may prescribe."];*

* [THE ABOVE PROPOSAL IS BASED ON SECTION 8 OF S. 397 (HEINZ) AND IS SUPPORTED BY THE DEPARTMENTS OF COMMERCE AND DEFENSE.]

(7) by redesignating subsections (f) and (g) as subsections (g) and (j), respectively;

(8) by inserting after subsection (e):

"(f) Forfeiture of Property Interest and Proceeds.

-- (1) Whoever has been convicted of a violation of section 5 of this Act shall, in addition to any other penalty, forfeit to the United States:

(A) any of his interest in, security of, claim against, or property or contractual rights of any

CONFIDENTIAL

CONFIDENTIAL

kind in the goods or technology that were the subject of the violation;

(B) any of his interest in, security of, claim against, or property or contractual rights of any kind in the goods or technology that were used to facilitate the commission of the violation; and

(C) any proceeds, including substitute assets, which were derived directly or indirectly from the transaction.

"(2) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

"(3) Upon conviction of a person for a violation of section 5 of this Act, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions

CONFIDENTIAL

CONFIDENTIAL

as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property or the proceeds from the sale thereof, shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this Act. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

"(4) All proceeds forfeited under this section, including proceeds from the sale of forfeited property, shall be covered into the Department of Commerce as miscellaneous receipts.";

(9) by inserting after subsection (g), as redesignated, the following paragraphs:

"(h) Statute of Limitations. -- Notwithstanding any other law, the United States may not bring any proceedings against a person for a violation of section 5 of this Act, unless the administrative or judicial proceedings are instituted within 10 years after commission of the offense.

CONFIDENTIAL

CONFIDENTIAL

"(i) Prior Convictions. -- No person convicted under the Espionage Act, the Espionage and Sabotage Act of 1954, or the Arms Export Control Act, shall be eligible, at the discretion of the Secretary, to apply for, or use, any export license during a period of 10 years from the date of conviction. Any outstanding export licenses in which such a person has an interest may be revoked at the time of conviction."; and

(10) by striking "or" after "(d)," in the introductory language that precedes paragraph (1) in subsection (j), as redesignated, and inserting after "(f)", ", (g) or (h)".

AMENDMENTS TO ENFORCEMENT PROVISIONS

SECTION 9. Section 12 of Pub. L. No. 96-72 is amended as follows:

(1) by inserting after the first sentence of subsection (a):

"Such officers or employees, except those acting pursuant to subsection 8(a) of this Act, in the performance of functions pursuant to this Act may seize commodities which they reasonably believe are being or about to be illegally

CONFIDENTIAL

CONFIDENTIAL

exported, execute search warrants, make arrests and carry firearms.";

(2) by striking in subsection (e) "section 5(h)" and substituting in lieu thereof "section 5(g)"; and

(3) by striking in subsection (e) "commodity".

AMENDMENTS TO ANNUAL REPORT

SECTION 10. Section 14 of Pub. L. No. 96-72 is amended as follows:

(1) in subsection (a) --

(a) by deleting paragraph (6) in its entirety, and by redesignating paragraphs (7)-(20) as paragraphs (6)-(19) respectively;

(b) by striking "section 5(f)" in paragraph (6), as redesignated, and substituting in lieu thereof "section 5(e)";

CONFIDENTIAL

CONFIDENTIAL

(c) by striking "section 5(f)(5)" in paragraph (7), as redesignated, and substituting in lieu thereof "section 5(e)(6)";

(d) by striking "section 5(g)" in paragraph (8), as redesignated, and substituting in lieu thereof "section 5(f)";

(e) by striking "section 5(h)" in paragraph (9), as redesignated, and substituting in lieu thereof "section 5(g)";

(f) by striking "section 4(e)" in paragraph 15, as redesignated, and substituting in lieu thereof "section 4(d)"; and

(2) by striking "section 5(i)" in subsection (c) and substituting in lieu thereof "section 5(h)".

AMENDMENTS TO EFFECT ON OTHER ACTS

SECTION 11. Section 17 of Pub. L. No. 96-72 is amended by striking the last sentence in subsection (c) and substituting in lieu thereof:

CONFIDENTIAL

CONFIDENTIAL

"For purposes of this subsection, the term 'controlled country' means any country to which exports are restricted under section 5 of this Act because of a finding that a significant contribution to the military potential of that country would prove detrimental to the national security of the United States.".

AMENDMENTS TO TERMINATION DATE

SECTION 12. Section 20 of Pub. L. No. 96-72 is amended by deleting "1983" and substituting "1987".

CONFIDENTIAL

CONFIDENTIAL

SECTION-BY-SECTION ANALYSIS
AND JUSTIFICATION

SECTION 1.

Paragraph (1) of this section amends section 2(3) of the Export Administration Act of 1979 (EAA or Act) to state that while both the private sector and the Federal Government should place a high priority on export policies, this priority must be consistent with the economic, security, and foreign policy objectives of the United States. By contrast, the current Act states that it is important to the national interest of the U.S. that the private sector and the Government place a high priority on exports, "which would strengthen the national economy". The current provision is inconsistent with the tone and concerns of the EAA because it implies that top priority should be given to exports, exclusive of other concerns. The amendment would clarify the importance of considering exports in the context of overall U.S. interests.

Paragraphs (2) strikes a paragraph from the finding section, which is replaced with new paragraph (7), described below.

CONFIDENTIAL

Paragraph (3) inserts a new paragraph in the EAA that describes the harmful effect foreign availability can have on U.S. national security interests. This finding focuses on the importance of eliminating foreign source availability of controlled goods and technology to make the export control system as effective as possible. This finding also provides a premise for the new corresponding policy declaration in section 3.

Paragraph (4) of Section 1 would insert new paragraph (5) into the EAA. This new paragraph notes that exporting goods and technology that contribute to the military capability of countries whose actions are adverse to the interest of the United States has increased the threat to the security of the U.S. and its allies, and has led those nations to increase their defense expenditures. This amendment highlights the consequences of failing to prevent or delay transfers of militarily sensitive technology. As such, it clarifies national security concerns and provides a better balance in the EAA findings between the advantages and disadvantages of export restrictions and export promotions.

SECTION 2

Section 2 of this bill would amend Section 3 of the EAA by modifying paragraph (3) and adding new paragraphs (10), (13), and (14).

CONFIDENTIAL

The modification of section 3(3) adds that it is the policy of the U.S. to negotiate bilaterally or multilaterally to eliminate the foreign availability of goods and technology sufficient in quantity and comparable in quality with those controlled or proposed to be controlled for national security purposes in the U.S. This amendment reflects the growing importance of negotiation as a critical element of the export control process.

New paragraph (10) states that it is the policy of the United States to negotiate agreements with neutral and non-aligned countries that would restrict the export or re-export of U.S. goods and technology that are controlled for national security purposes. This paragraph is needed to address concerns about the diversion of dual use items to proscribed countries from neutral and non-aligned countries, and the importance of negotiations as a tool to resolve this problem.

New paragraph (13) states that it is the policy of the United States to minimize the impact of foreign policy controls on existing contracts and on business activities in allied countries. U.S. businesses have complained that the unpredictability of foreign policy controls have caused them business losses due by prohibiting them from completing existing contracts as well as by damaging their reputations

CONFIDENTIAL

CONFIDENTIAL

Approved For Release 2008/09/03 : CIA-RDP85-01156R000200190008-8

as reliable suppliers. Foreign allies have complained about the extraterritorial application of U.S. export laws. This policy statement notes that to the extent consistent with the underlying purpose of the foreign policy controls, the U.S. will attempt to minimize these impacts. In addition, section 5(6) of this bill contains a sanctity of contract provision to provide the business community with additional protection.

New paragraph (14) recognizes that the Congress and the business community have urged the Commerce Department to develop new licensing mechanisms to ease trade controls for West-West trade and intra-company trade. Under section 4 of the Act, the Secretary of Commerce already possesses the authority to require such licenses as he believes will assist in the effective and efficient implementation of the Act. Thus, this policy would urge the Secretary to use that authority to develop new licenses for the situations described herein, and report to Congress on his efforts.

SECTION 3

Section 3 of this bill amends section 4 of the EAA. Paragraph (1) of section 3 modifies section 4(a)(2) of the

CONFIDENTIAL

Approved For Release 2008/09/03 : CIA-RDP85-01156R000200190008-8

CONFIDENTIAL

Approved For Release 2008/09/03 : CIA-RDP85-01156R000200190008-8

EAA by deleting reference to the qualified general license. This license has proven to be impractical to administer and has caused confusion and delays in the business community. Hence, references to the qualified general license in section 4 and in other sections of the EAA are being deleted. Nonetheless, the Secretary expressly retains authority under this paragraph to issue licenses authorizing multiple exports.

Paragraph (2) of section 3 amends section 4(b) by striking the word "commodity" from the term "commodity control list." This deletion clarifies that controls consist not only of commodities on the commodity control list, but also of technical data described in technical data regulations.

Paragraph (3) of section 3 modifies the foreign availability test in section 4(c) of the Act from "significant quantities and comparable in quality" to "sufficient quantities and comparable in quality." This definition is now made consistent throughout the Act.

SECTION 4.

Section 4 amends section 5 of the EAA.

CONFIDENTIAL

Approved For Release 2008/09/03 : CIA-RDP85-01156R000200190008-8

CONFIDENTIAL

New subparagraph (1)(B) reaffirms the authority of the President to impose controls on goods and technology of military significance which have been proposed to COCOM for multilateral control even when they are available from foreign sources, provided he has made the national security override determination described in section 5(f). This provision is intended neither to expand nor detract from the President's existing authority.

Paragraph (2) of section 4 deletes subsection 5(a)(2)(B); this provision is subsequently re-inserted in section 10(f)(3) of the EAA by section 7(4) of this bill. Section 5(a)(2)(B) refers to notification of applicants in connection with denials of licenses on national security grounds. Retaining it in section 5 is confusing to Government officials who must administer export licenses because the primary authority for export denial procedures occurs in section 10 of the EAA.

Paragraph (3) deletes the word "commodity" in the first sentence of section 5(c)(1). This clarifies that controls consist not only of commodities on the commodity control

CONFIDENTIAL

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~

7

list, but of also technical data described in separate technical data regulations.

Paragraph (4) modifies the heading of section 5(d) to reflect the fact that this subsection refers to militarily critical goods as well as militarily critical technologies.

Paragraph (5) of this section modifies section 5(b)(2)(B) to include keystone materials. These materials properly belong on the militarily critical goods and technology list.

Paragraph (6) amends section 5(b)(5) to clarify that the militarily critical technology list is not only a part of the commodity control list but also a part of other portions of the Export Administration Regulations such as the technical data regulations.

Paragraph (7) provides that adequate export controls on militarily critical technology and keystone equipment shall be accompanied by reduced controls on the products of that technology and equipment. It should not be necessary to maintain strict controls on those commodities which are not critical or integral to the process that has produced them. Thus, one constructive means of reducing trade controls is to

~~CONFIDENTIAL~~

CONFIDENTIAL

Approved For Release 2008/09/03 : CIA-RDP85-01156R000200190008-8

reduce those controls on the by-products of adequately controlled militarily critical technology and keystone equipment.

Paragraph (8) deletes subsection (e) of section 5. Subsection (e) refers to the qualified general license provision which was deleted earlier in this bill.

Paragraphs (9) and (10) amend the definition of foreign availability in sections 5(f)(1) and 5(f)(2) by substituting the words "comparable quality" for the words "sufficient quality." This change conforms the definition of foreign availability in section 5 to that contained in section 4. Moreover, it is difficult to determine what "sufficient quality" means in the context of the EAA, whereas "comparability" is intended to imply fungibility and is a better choice of words in the context of this provision.

Paragraph (11) of this bill clarifies that the mere capacity of a foreign country to produce items of sufficient quantity and comparable quality to those controlled by the U.S. does not in and of itself constitute foreign availability.

CONFIDENTIAL

Approved For Release 2008/09/03 : CIA-RDP85-01156R000200190008-8

Paragraph (12) amends section 5(f)(4) by instructing the President actively to pursue negotiations rather than merely to take steps to initiate negotiations. This change is intended to emphasize the importance of the process of negotiation, rather than the act of merely initiating negotiations.

Paragraph (13) amends the indexing section of the Act. Under present law the indexing section provides that regulations shall be issued permitting, where appropriate, annual increases in the performance levels of goods or technology subject to licensing requirements. Any good or technology no longer meeting the performance requirement is to be removed from the control list unless any agency objects, in which case the Secretary of Commerce shall consider that objection. Paragraph (13) modifies the indexing provisions by requiring the Secretary to consider as one factor in determining whether to remove a good or technology from control status the anticipated military needs of countries to which exports are controlled for national security purposes. Thus, the automatic nature of the indexing provision is modified by requiring the Secretary to take into account the anticipated military need of potential adversaries.

Paragraph (14) makes a technical conforming amendment.

CONFIDENTIAL

Paragraphs (15), (16) and (17) make minor editorial changes to section 5(i) in order to clarify existing ambiguities in the EAA.

Paragraphs (18) and (19) modify the section on multi-lateral export controls by strengthening the language relating to U.S. negotiations with COCOM governments. The President is urged, among other matters, to negotiate to make COCOM function more effectively in controlling export trade, to improve the International Control List, to upgrade the Secretariat, to strengthen enforcement, and to provide annual funding.

Paragraph (20) relates to the new policy expressed in section 3 regarding diversion from neutral and non-aligned countries by urging the Secretary of State to conduct negotiations with neutral and non-aligned countries to restrict the export of goods and technologies that are controlled for national security purposes.

Paragraph (21) amends section 5 by noting that a diversion to significant military use may include the diversion not only of weapons and military equipment but may also include diversion of a dual use item on the COCOM List.

CONFIDENTIAL

Paragraph (22) requires the Secretary of Commerce, assisted by other Cabinet officials, to study and report to Congress on whether sales within the U.S. of controlled items to embassies and affiliates of proscribed countries are rendering the export controls ineffective.

SECTION 5.

Section 5 amends section 6 of the EAA.

[Paragraph (1) provides the President with an additional foreign policy tool by granting him the authority not only to impose export controls for foreign policy reasons, but also to impose import controls as well. Under this provision, the President is required to impose import controls on a country whenever he imposes export controls on that country, subject to such exemptions for specified goods and technology as the President may prescribe. It is intended that the exemption provided by the last clause would permit the President to exempt all goods and technology from import controls should he so choose.]

[This provision is based on section 6 of S. 397 (Heinz), and is supported by the Departments of Commerce and Defense.]

CONFIDENTIAL

CONFIDENTIAL

Paragraph (2) of section 5 amends section 6(c) of the EAA by conforming the statutory language to Congress' original intent. This bill would amend the EAA in a technical manner that eliminates ambiguity and clarifies Congress' original intent.

Paragraph (3) of section 5 amends section 6(f) of the EAA by inserting a new sentence that states that section 6(f) does not authorize export controls on donations of articles intended to be used to relieve human suffering, except to the extent that the President determines that such donations are in response to coercion of the proposed recipient or donor. This sentence is added to make the EAA consistent with the International Economic Emergency Powers Act.

Paragraphs (4) and (5) amend section 6(k) by deleting the word "commodity" in the phrase "commodity control list" and by striking the second sentence of section 6(k) and substituting in lieu thereof, "The Secretary shall clearly identify on the control list the controls under this section that apply to goods, technology or destinations." This amendment clarifies that technical data are controlled under regulations that are separate from the commodity control list.

CONFIDENTIAL

CONFIDENTIAL

Approved For Release 2008/09/03 : CIA-RDP85-01156R000200190008-8

Paragraph (6) adds a new subsection to section 6 of the Act that provides for the sanctity of contracts already in existence at the time the President imposes export controls for reasons of foreign policy. This provision only applies to contracts the terms of which require delivery of the good or technology that is the subject of control within 270 days after the date of suspension of trade is imposed. This 270-day period is the same as that provided for agricultural commodities in the Futures Trading Act of 1982. The President may override this exemption from controls if he decides the exemption would prove detrimental to U.S. national interests.

[This override test differs from that used in the Futures Trading Act of 1982, which refers to national emergencies and declarations of war. Alternative endings are offered in the bill.]

SECTION 6.

Section 6 amends section 7 of the EAA by deleting subsections (c)-(f) and (h)-(j) of section 7 in their entirety and redesignating the remaining sections accordingly. These deletions remove from the Short Supply

CONFIDENTIAL

Approved For Release 2008/09/03 : CIA-RDP85-01156R000200190008-8

CONFIDENTIAL

section of the Act all special provisions that relate to particular items. Specifically, section 6 of this bill deletes those special provisions relating to refined petroleum products, domestically produced crude oil, horses, red cedar, and recycled metals. The bill also deletes those provisions relating to barter agreements. The President retains general authority to impose controls for reason of short supply as he deems necessary. The bill also retains those provisions relating to trade controls on agricultural commodities.

[The SIG-IEP did not address whether to delete the agricultural provision. To be consistent with its other decisions, the SIG-IEP should require the bill to delete the agricultural provision from this section.]

SECTION 7.

Section 7 amends section 10 of the EAA. Paragraphs (1), (2), (3) and (5) expedite the procedures for processing export license applications. These paragraphs reduce from 90 days to 60 days the time granted to the Commerce Department to process a license that does not require interagency review; reduces from 60 days (30 day initial review period

CONFIDENTIAL

CONFIDENTIAL

plus 30 day extension) to 45 days the amount of time given to all other agencies to review a license application; and gives to the Department of Commerce 14 days rather than 10 days to process a license after its receipt by the Commerce Department. This last change is needed because 10 days are inadequate to (a) screen licenses, (b) send applicants acknowledgement, and (c) determine the need for further documentation interagency review or COCOM review.

Paragraph (4) inserts in section 10(f)(3) that portion of the EAA which was deleted in section 5(a)(2)(B). As noted earlier in this analysis, this provision more logically belongs in section 10 of the EAA than in section 5.

SECTION 8.

Section 8 amends section 11 of the EAA. Paragraphs (1) and (2) of this section include "conspiring to export" or "attempting to export" in the category of violations subject to the punishments described in sections 11(a) and 11(b)(1) of the EAA.

Paragraph (3) simplifies the showing that the government must make to prove a willful violation in Section 11(b)(1) of

CONFIDENTIAL

CONFIDENTIAL

the EAA. The amended version would require the government to either show that the goods were destined for a proscribed country, or show that the defendant knew that the goods were for the benefit of a country to which exports are restricted for national security or foreign policy purposes.

Paragraph (4) of this section clarifies that "countries to which exports are restricted for national security purposes" are those countries designated by the country policy review of section 5(b) of the EAA as proscribed destinations.

Paragraph (5) provides statutory authority to punish a person in possession of goods that are intercepted by law enforcement officials before an illegal export occurs. This paragraph would also allow enforcement officials to charge a person who is not involved in the act of making an illegal export, but who knowingly participates in stages of the crime.

Paragraph (5) adds a new paragraph to the EAA that reaffirms the current regulatory authority of the Secretary to create crimes under section 11(a) of the EAA.

CONFIDENTIAL

CONFIDENTIAL

[Paragraph (6) of this section authorizes the President to prohibit offenders of the EAA or any COCOM provision or foreign law or regulation implementing such a provision from importing goods or technology into the United States. The section provides a strong new penalty that would serve to deter export control violations while other penalties would not. Moreover, this section extends the reach of the President's authority in that he may restrict the import of items from companies over whose exports he has no control.]

[The above proposal is based on section 8 of a bill introduced by Senator Heinz (S. 397) and supported by the Departments of Commerce and Defense.]

Paragraph (7) redesignates subsections (f) and (g) as subsections (g) and (j), respectively, to conform to the additions and deletions in this bill.

Paragraph (8) inserts a new criminal forfeiture provision that requires the forfeiture of goods or technology that are the subject of a national security export control violation and those that are used to facilitate the commission of such violation. The forfeiture provision would also reach the proceeds, including substitute assets, derived directly or indirectly from the transaction. It is well

CONFIDENTIAL

CONFIDENTIAL

established that monetary gain is a primary motivating force in serious national security control export violations. This amendment will enable prosecutors to recoup the gain that violators might otherwise be able to shelter. All proceeds forfeited under this section, including proceeds from the sale of forfeited property, would go into the Department of Commerce as miscellaneous receipts. This would allow a fund to be established, using the proceeds obtained from criminal violations of the EAA, that could be used to assist in future investigations and prosecutions of export control violations.

Paragraph (9) adds new sections (h) and (i) to Section 11 of the EAA. Section (h) extends the statute of limitations for offenses committed under section 5 of the Act. At present, there is a five-year statute of limitations for national security violations. However, a period of five years is unusually short in light of the fact that national security violations can cause monumental harm to the country while they often go undetected for an extended period of time after their commission. These violations are difficult to detect because they usually involve deception and concealment and often require an investigation overseas. Section (h) provides for a ten-year period of limitation, as do the Atomic Energy Act and the Espionage Act.

CONFIDENTIAL

Section (i) corrects a major omission in the present export control program. There have been cases that involve dangerous, illegal technology transfers, but that include no violation of the Act. Under this amendment, at the discretion of the Secretary of Commerce persons convicted under the Espionage Act, the Espionage and Sabotage Act, or the Arms Export Control Act, would be barred from applying for or using export licenses for a 10-year period from date of conviction.

Paragraph (10) conforms redesignated subsection (j) to the additions and deletions in this bill.

SECTION 9.

Section 9 amends section 12 of the EAA. Under paragraph (1), Office of Export Enforcement Criminal Investigators would be permitted to seize commodities that they reasonably believe are being or about to be illegally exported, execute search warrants, make arrests and carry firearms.

These powers are necessitated by the high potential for violence in the cases in this area. Many of these cases are characterized by the high-speed movement of cargo; trans- actions involving tremendous monetary gain; individuals who

CONFIDENTIAL

CONFIDENTIAL

cross national boundaries without hesitation; enforcement activities in high-crime areas, frequently at night or at unconventional hours; and stiff criminal penalties in the event of conviction that make violent resistance to arrest a viable option for suspects. Also, it is impossible to predict in advance when an arrest or seizure will be necessary. Assistance from other law enforcement agencies is often unavailable when it is required. Finally, individuals subject to the proscriptions of the EAA have been apprehended with firearms in their possession.

Paragraph (2) redesignates the paragraphs to conform to the additions and deletions in the EAA resulting from this bill.

Paragraph (3) deletes the word "commodity" to conform with changes made by section 3(2) of this bill.

SECTION 10.

Section 10 amends section 14 of the Act. Paragraph (1) redesignates the paragraphs in the Act and effects one deletion to conform to the additions and deletions in other provisions of this bill. The other paragraphs redesignate

CONFIDENTIAL

CONFIDENTIAL

Approved For Release 2008/09/03 : CIA-RDP85-01156R000200190008-8

21

Paragraphs of the Act to conform with changes made by this bill.

SECTION 11.

Section 11 amends section 17 of the EAA by redefining the term "controlled country" so that it is more appropriate for civil aircraft equipment than the existing definition, which relies on the definition contained in section 620(f) of the Foreign Assistance Act of 1961.

SECTION 12.

Section 12 amends section 20 of the EAA to extend it for 4 years.

CONFIDENTIAL

Approved For Release 2008/09/03 : CIA-RDP85-01156R000200190008-8

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~
FEB 28 1983

ISSUES

Extraterritoriality

Issue: Should extraterritorial foreign policy export controls be eliminated except in the case of a declared national emergency?

(Options Paper, p. 11, Issue A.1(B))

Business Protection Against Export Controls

Issue: Should the special protections given to agricultural products be extended to other products?

- contract sanctity
- compensation for losses (or OPIC insurance)
- Congressional veto

(Options Paper, p. 12, Issues B.1., and p. 13, Issue C.1)

Energy Dependence Controls

Issue: Is it U.S. policy that export controls be used to prevent the U.S. and its allies from excessive energy and other critical resource dependence on potential adversaries?

If so, should this policy be expressed in the Act?

(Options Paper, p. 9, Issue 3)

Exports to Embassies

Issue: Should the Act explicitly grant authority to the President to control exports to proscribed country

CONFIDENTIAL

2

embassies and their affiliates in the United States
as the Secretaries of Commerce and Defense designate?

(This is a modification of the Options
Paper, p. 6, Issue D.1.)

Import Control Authority

Issue: Should the President be given new authority to
control imports in the following circumstances:

- ° when export controls are imposed?
- ° as a penalty against companies who violate U.S.
export laws or COCOM agreements?

(These are modifications of two issues in
the Options Paper: p. 4, Issue 3, and p. 17,
Issue F.1. The proposal has been changed to
apply to companies and not countries.)

Antiboycott

Issue: Should the Act direct the Departments of Commerce and
Treasury to harmonize their respective antiboycott
laws?

Enforcement to Customs

Issue: Should the Act be amended to transfer all enforcement
authority from Commerce to Customs?

(Options Paper, p. 21, Issue B.1)



CONFIDENTIAL
UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

MAR 03 1983

MEMORANDUM TO: Marc Leland
FROM: Lionel H. Olmer *LHO*
SUBJECT: EAA: Results of the 28 February
Under Secretaries Meeting

As requested at the last SIG-IEP meeting, the attached indicates the decisions reached at the last Under Secretaries meeting on each of the issues raised in the Options paper. Explanatory comments, where necessary, are provided in the margin.

The decisions reached at the last SIG-IEP meeting are not reflected in the attachment but will be reflected in the draft bill we are preparing. Those decisions, as I understand them, were (1) no restrictions on the present extraterritoriality provisions should be written into the new Act; (2) some form of contract sanctity provision should be included for discussion purposes in the draft bill; and (3) no compensation or OPIC insurance provisions should be included in the bill.

Please distribute the attached paper and this memorandum to members of the SIG-IEP.

Attachment



CONFIDENTIAL

MAR 02 1983

~~CONFIDENTIAL~~EXPORT ADMINISTRATION ACT RENEWALOPTIONS PAPERI. National Security ControlsA. Foreign Availability (Section 5(f))

Issue 1: Should foreign availability be eliminated as a criterion for decontrol of items on the Commodity Control List (CCL)? (ACEP)

Present Law: When the Secretary of Commerce determines that goods and technology controlled for national security purposes are available from foreign sources, he must decontrol the items and issue an export license, unless the President decides that removing controls would be detrimental to the national security.

Pro: Foreign availability is often difficult to determine accurately. Therefore, in the national security area, this should not be a criterion for decontrol. Even if foreign availability could be accurately determined, national security concerns should still preclude decontrol of these items.

Con: For the United States to control items available from foreign sources would be ineffective and unnecessarily harmful to U.S. businesses. Moreover, there is no need to eliminate foreign availability as a criterion for decontrol, because the Presidential override can be invoked as necessary to maintain export controls on a given item.

Approve _____ Disapprove XX _____

Issue 2: Should the current mandatory license approval standard on the basis of foreign availability be changed to a discretionary standard for up to one year while negotiating to eliminate the foreign availability? (The provision for override for national security reasons would remain unchanged; the mandatory

~~CONFIDENTIAL~~

approval standard would apply after the one year period.) (ACEP)

Present Law: Barring a Presidential override for national security reasons, the Secretary must approve a license when foreign availability is found to exist.

DOD wants to make clear that nothing in the Act precludes the President from denying a license in the national security interest]

Pro: As a practical matter, the override provision already gives the Secretary of Commerce discretion to deny a license despite foreign availability. This proposal emphasizes the need to negotiate with our allies and other nations to remove the availability of items and technology to the Warsaw Pact from foreign sources. Moreover, withholding of licenses may strengthen the U.S. negotiating posture.

Con: For the United States to deny licenses on items available from foreign sources would be ineffective and unnecessarily harmful to U.S. businesses. Withholding of licenses may in fact weaken the U.S. negotiating posture. Delay of license issuance for one year may be tantamount in many cases to a denial.

Approve _____ *Disapprove xx

Issue 3. Should the current definition of foreign availability be made more specific as follows: "For purposes of this Act, assessment of comparable quantity and quality shall include, but not be limited to, the following factors: cost, reliability, the availability and reliability of spare parts, and cost of quality thereof, maintenance programs, technological data packages, back-up packages, long-term durability scale of production, ease with which machinery will be integrated in the mode of production, and spoilages and tolerance factors for end products produced by the machinery?" (ACEP)

Present Law: Foreign availability is defined as a good or technology available from foreign

CONFIDENTIAL

CONFIDENTIAL

sources that can be obtained in sufficient quantity and is of sufficient quality so that U.S. export controls are rendered ineffective.

[Issue Undecided

°DOD and DOC to work out compromise on "Sufficient" quantity "Comparable" quality

°State may want a more expanded definition than currently in the Act]

Pro: The change from "sufficient" to "Comparable" clarifies the foreign availability assessment. Moreover, the listing of various factors involved in the foreign availability assessment ensures increased accuracy, thereby enhancing the national security control system.

Con: Foreign availability should be defined by regulation, not inflexibly by statute. The meaning and application of certain components of this definition are not clear.

Approve _____ Disapprove _____

B. COCOM (Section 5(i))

Issue 1: Should the United States unilaterally control items it submits for inclusion on the COCOM list pending a COCOM list decision? (DOD)

Present Law: There is no requirement that restrictions or controls be placed on goods or technology that the U.S. recommends to COCOM for multilateral export control.

*[°DOD wants language added re: President's existing power to do this]

Pro: Such control would demonstrate our seriousness about the proposed list item with our COCOM partners. This proposal could, arguably, improve our negotiating posture.

Con: This power already exists in a discretionary form under current law. Mandatory unilateral controls on U.S. items during the sometimes protracted COCOM review process would prejudice U.S. businesses. The COCOM process would also suffer because the current practice of submitting list proposals in an exploratory, tentative form could not continue.

Approve _____ *Disapprove _____ XX

CONFIDENTIAL

~~CONFIDENTIAL~~

Issue 2: Should the EAA require the President to attempt to formalize the COCOM organization, seek establishment of a military subcommittee, and provide additional funding for COCOM? (ACEP)

Present Law: COCOM is a purely voluntary organization not established by treaty or by formal international agreement. The current law does not address COCOM funding or provide for a military subcommittee.

Pro: COCOM's current informal, voluntary status has kept the organization from maintaining effective multilateral controls. Formalization of COCOM could lead to higher ranking representation, adequate funding and more effective controls.

Con: An attempt to formalize COCOM may force some members to be less cooperative or to withdraw because members would often not be in a position to agree to certain controls if those controls were to be the subject of formal governmental review. Moreover, a statutory mandate for COCOM formalization might be counterproductive to our efforts to seek increased formalization or to enhance COCOM's effectiveness under its current structure.

*[°Language to be added re: strengthening COCOM]

Approve _____ *Disapprove xx

Issue 3: Should the EAA provide sanctions against *companies of COCOM members who violate COCOM agreements? (DOD)

Present Law: There are currently no sanction provisions in the EAA.

Pro: Such sanctions would make multilateral controls through COCOM more effective.

Con: This proposal would jeopardize continued participation in COCOM by certain member states. Any provision for sanctions should result from agreement among the COCOM members rather than by unilateral U.S. statutory mandate. This proposal would invite retaliation against the U.S.

[Issue Undecided
°SIG-IEP Issue

*°DOD modified issue to apply to companies not countries

Approve _____ Disapprove _____

CONFIDENTIAL

C. Militarily Critical Technology List (MCTL)
(Section 5(d))

Issue 1: Should the EAA be amended to provide:
"The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls over the products of that technology and equipment?" (Business)

Present Law: No statutory distinctions currently exist between the export controls over militarily critical technology and keystone equipment and the products of that technology and equipment.

Pro: The need for control is on the underlying technology, not the resulting product. The burden of acquiring licenses would be reduced.

Con: Reverse engineering of the decontrolled and available products could jeopardize U.S. national security.

Approve _____ Disapprove _____

Issue 2: Should the definition of the MCTL be expanded to include: "goods and technology (i) that would extend, complete, maintain or modernize process lines employed in the application of the militarily critical technology, (ii) the analysis of which would reveal or give insight into a United States military system and would thereby facilitate either the design and manufacture of that system or the development of counter-measures against that system, or (iii) which will contribute to strengthening Soviet military capabilities or enabling defense priority industries, including: microelectronics, computers, communications, shipbuilding, aerospace

[Issue Deferred
° DOD to propose
language

° State opposed]

CONFIDENTIAL

CONFIDENTIAL

and aviation, including instrumentation, in the Soviet Union and the Warsaw Pact or other proscribed nations to produce items controlled for national security reasons to the detriment of the United States?" (DOD)

Present Law: The MCTL is not defined, though reference is made in the MCTL section to goods and technology that would significantly advance the military system of a country to which exports are controlled. No MCTL has ever been finalized.

Pro: Explicitly defining the MCTL would clarify its scope and would ensure a more accurate assessment of militarily critical technologies.

Con: An MCTL definition should not be included in the statute because more flexibility can be retained by defining it administratively by regulation. This definition is broader than necessary to adequately protect national security. Opening up this definition to Congressional debate runs the risk of an unfavorable ultimate result.

*[°Regulations
issue not
statutory]

Approve _____ *Disapprove XX

D. Exports to Embassies (Amend Section 5(b))

Issue 1: ~~Should a validated license and DOD review be required for proposed "exports" of any goods or technology on the CCL to proscribed country embassies in the United States and to all international organizations in the United States?~~
(DOD)

*modified
(see next
page)

Present Law: There are no provisions explicitly authorizing restrictions on domestic sales of goods or technology to embassies of proscribed countries located in the United States or to international organizations in the United States.

CONFIDENTIAL

CONFIDENTIAL

*[Issue Unresolved]

°SIG-IEP Issue

*°Issue modified to:

"Should the Act explicitly grant authority to the President to control exports to proscribed country embassies and their affiliates in the United States as the Secretaries of Commerce and Defense designate?"

E. Multilateral vs. Unilateral

Pro: Transfer of controlled items to these embassies and international organizations is a major loophole in the current export control system.

Con: This proposal would be virtually unenforceable. Retaliation against U.S. embassies abroad could be expected. The proposal would not alleviate the problem of covert operators, since those individuals would not apply for a license in the first instance.

Approve _____ Disapprove _____

Issue 1: Should a specified notice and comment period for Congress and the private sector be required prior to the imposition of unilateral controls?
(Business)

Present Law: The Secretary of Commerce is not required to consult with the Congress or the private sector before unilaterally imposing export controls for national security purposes.

Pro: The proposal gives the private sector the opportunity to inform the Administration of the economic effect of, and alternatives to, contemplated controls. Congress would also be assured of the opportunity to express its concerns prior to the imposition of controls.

Con: The need for secrecy in the national security area makes such a provision impractical. The provision also reduces Presidential flexibility and authority.

Approve _____ Disapprove XX

F. DCD Role (See Organizational Change Section)**CONFIDENTIAL**

CONFIDENTIALG. Findings and Policy Declarations

Issue 1: Should section 2(3) be amended to read:
 "A high priority should be placed on
 *export policies ~~exports~~ [ACEP: ~~export policy~~], consistent
 with the economic, security, and foreign
 policy objectives of the United States?"
 (State/ACEP)

Present Law: Current Section 2(3) calls for
 high priority on exports but makes no
 reference to the national security interests
 of the United States.

Pro: This change would demonstrate the
 Administration's heightened concern regarding
 the adverse impact of security-sensitive
 exports on our national security, and would
 state a better balance between the economic
 and security objectives of the Act.

*[°Approved as
 amended]

Con: This proposal is redundant with other
 parts of the Act.

*Approve XX Disapprove

Issue 2: Should section 2(5) be deleted and
 language similar to the following substi-
 tuted: "The transfer of critical
 commodities and technical data has made a
 significant contribution to the military
 potential of other countries which has been
 detrimental to the security of the United
 States, its allies, and other friendly
 nations, and has necessitated increases
 in the defense budgets of these nations?"
 (State)

Present Law: Current section 2(5) provides:
 "Exports of goods or technology without regard
 to whether they make a significant contribu-
 tion to the military potential of individual
 countries or combinations of countries may
 adversely affect the national security of the
 United States."

Pro: This change would demonstrate the
 Administration's heightened concern regarding
 the adverse impact of security-sensitive
 exports on our national security, and would

CONFIDENTIAL

CONFIDENTIAL

state a better balance between the economic and security objectives of the Act.

Con: Arguably there may not be empirical evidence to support this finding.

Approve XX Disapprove _____

Issue 3: Should a finding and policy declaration be proposed asserting that export controls should be used to seek to prevent the U.S. and its allies from excessive energy and other critical resource dependence on potential adversaries? (ACEP)

Present Law: There are no findings or policy declarations that relate to the desirability of avoiding becoming dependent on others for critical resources, in general, or for energy resources, in particular.

Pro: This finding and policy declaration would reflect U.S. policy, and would ensure that the national security significance of resource dependence is recognized in the Export Administration Act. The Act is the most appropriate statute for such recognition.

[Issue Unresolved

*SIG-IEP Issue]

Con: The provision is unnecessary because export controls on energy-related items are already within the policy purview of the Act. The provision singles out one of many possible reasons for the imposition of export controls. Following so soon after the pipeline sanctions, this provision would unnecessarily alienate members of Congress, the business community and our allies.

Approve _____ Disapprove _____

H. Negotiations with Neutral and Non-aligned Countries
(Amend Sections 3(9) and 5(f)(4))

Issue 1: Should the President be authorized to

CONFIDENTIAL

CONFIDENTIAL

negotiate (and encouraged to do so through a policy declaration) with neutral and non-aligned countries with
* whom we have common ~~strategic~~ interests to restrict re-export of U.S. goods and technology? (DCD)

Present Law: The Act states that is the policy of the U.S. to cooperate with other countries with whom we have defense treaty commitments to restrict exports contributing to the military potential of another country to the detriment of the United States. The Secretary of State is responsible for conducting negotiations to carry out this policy. Also, whenever the President exercises his override of foreign availability for national security reasons, he is required to negotiate to eliminate this foreign availability. Under the Case Act, all agreements must be reported to the Congress, although classified agreements may be sent to selected committees only. These committees may not distribute these agreements without Presidential approval.

Pro: Providing this authority to the President would reflect the increased emphasis that this Administration has given to guarding against diversion of U.S. technology and goods through these countries. The provision would highlight the need for State Department attention in this area.

Con: Neutral and non-aligned countries might be reluctant to conclude cooperative agreements with the U.S. if these agreements were characterized as evidence that they had common strategic interests with the United States. Moreover, if these agreements were transmitted to Congress, there would be a high risk that their content would become public.

*[°Approved, as amended]

*Approve xx Disapprove

CONFIDENTIAL

CONFIDENTIALI. Indexing Provision (Section 5(g))

Issue 1: Should indexing be eliminated from the national security section of the EAA?
(DOD)

Present Law: The statute provides that the Secretary of Commerce may, when appropriate, provide by regulation for annual increases in the performance levels of goods or technology subject to licensing requirements. Any good or technology no longer meeting the performance requirement is automatically removed from national security control unless any agency objects and the Secretary thereafter determines that the item should remain under control.

Pro: The indexing provision is unnecessary because the EAA already calls for periodic list review. Pre-set standards for decontrolling items cannot currently anticipate the rapidly changing development of technology.

*[*Revise current indexing provision to consider adversaries' military capabilities and needs]

Con: Because no items should be unnecessarily controlled, the performance level of controlled items should be reviewed frequently. The indexing provision is necessary because review of multilaterally controlled items otherwise occurs only once every three years. The indexing provision ensures timely decontrol.

Approve _____ *Disapprove XX

II. Foreign Policy ControlsA. Extraterritoriality (Section 6(a))

Issue 1: Should the extraterritorial application of controls be restricted by:

(A) eliminating them altogether
(Business);

Approve _____ Disapprove XX

*[*All agencies disapprove except USTR

(B) eliminating such controls except in the case of a declared national emergency (USTR);

*SIG-IEP Issue]

Approve _____ *Disapprove XX

CONFIDENTIAL

CONFIDENTIAL

(C) inserting a finding which states "when imposing new foreign policy controls, impact on pre-existing contracts and on business activities in allied or other friendly countries should be minimized to the extent consistent with the underlying purpose of the controls". (State)

Approve XX Disapprove _____

Present Law: The statute does not address who is included in the operative phrase "persons subject to the jurisdiction of the United States"; by regulation, the Commerce Department has, on occasion, defined this term to include foreign subsidiaries and licensees of U.S. corporations.

Pro: The current extraterritorial reach of these controls has caused major international relations problems, particularly with our allies. Arguably, extraterritoriality may violate international law and interfere with principles of sovereignty.

Con: Extraterritorial application of the statute is necessary to implement foreign policy controls effectively.

B. Sanctity of Contract and Licenses (Non-retroactivity)

Issue 1: Should contracts and export licenses be protected from later imposition of controls for at least a specified period of time by:

(A) totally insulating such contracts and licenses? (Business);

Approve _____ Disapprove XX

CONFIDENTIAL

CONFIDENTIAL

*[°All agencies disapprove except USTR

(B) insulating such contracts and licenses except in the case of a declared national emergency? (USTR);

°SIG-IEP Issue

°Relationship to Agriculture protections to be discussed]

Approve _____ * Disapprove XX

(C) inserting a policy declaration that "when imposing new foreign policy controls, impact on pre-existing contracts and on business activities in allied or other friendly countries should be minimized to the extent consistent with the underlying purpose of the controls?" (State)

Approve XX Disapprove _____

Present Law: The President may invoke export controls that affect existing export controls and outstanding export licenses. Note, however, that the President recently signed a law that provides contract sanctity for agricultural exports for a period of 270 days after imposition of the controls.

Pro: The imposition of export controls on pre-existing contracts and licenses makes U.S. exporters unreliable suppliers and forces them to incur unexpected economic losses.

Con: The President's foreign policy powers would be significantly impaired by such provisions; less so, by the proposed policy declaration.

C. Insurance or Compensation

Issue 1: Should insurance or compensation be provided for business losses caused by the imposition of foreign policy controls? (USTR/Business)

Present Law: There are no provisions to insure or compensate businesses that incur economic loss caused by the imposition of foreign policy controls. (Compensation is provided for agricultural products under separate statute.)

CONFIDENTIAL

CONFIDENTIAL

Pro: The government should reimburse businesses for losses caused by its actions.

Con: This proposal might be very costly. Also the extent of injury in many cases would be difficult to determine. Would create a potentially undesirable precedent with regard to compensating citizens for losses incurred by the exercise of other foreign policy authorities. Without regard to the proposed compensation, U.S. suppliers would still be deemed unreliable.

*[°SIG-IEP Issue

°Relationship to Agriculture protections to be discussed]

Approve _____ *Disapprove XX

D. Restrictions on Imposition of Controls

Issue 1: Should the President's authority to impose foreign policy controls be limited by:

(A) allowing foreign policy controls only under the International Economic Emergency Powers Act (IEEPA) standard which requires a "national emergency" declaration by the President? (Business);

Approve _____ Disapprove XX

(B) requiring the President to meet (rather than just consider) the current six criteria for imposition of controls? (Business);

Approve _____ Disapprove XX

(C) strengthening the requirement to complete an economic impact analysis before the imposition of any control? (Business);

Approve _____ Disapprove XX

(D) requiring Congressional approval before controls may be imposed? (Business);

Approve _____ Disapprove XX

CONFIDENTIAL

CONFIDENTIAL

(E) granting Congress the right to veto any control? (Business)

Approve _____ Disapprove XX

(F) requiring a mandatory Congressional and private sector notice and consultation period before a control becomes effective? (USTR/Business).

Approve _____ Disapprove XX

Present Law: The President may impose export controls to the extent necessary to further significantly the foreign policy of the United States or to fulfill its international obligations. Before imposing foreign policy export controls, the President must first consider six statutory criteria and later report to Congress on his conclusions. The President is not bound to make a decision that conforms to the result of this consideration. One of the six criteria that the President must consider is the effect of the controls on the competitive position of the U.S. in the international economy, on the reputation of the U.S. as a reliable supplier, and on individual U.S. companies and their employees and communities. Also, before imposing foreign policy controls, the Secretary of Commerce shall consult with affected industries as he considers appropriate and also consult "in every possible instance" with the Congress. Congressional approval is not required before foreign policy controls may be instituted. Congress does not have the authority to veto any non-agricultural export control, although the Congress can pass a new law that would have the effect of overturning an export control.

Pro: All of these proposals, in varying degrees, impose necessary safeguards against misuse of foreign policy controls that can dramatically affect U.S. businesses. The current virtually unrestricted use of foreign policy controls has damaged U.S. national and business interests both domestically and internationally. These controls should only

CONFIDENTIAL

CONFIDENTIAL

be used in limited circumstances following consideration of Congressional and private sector views.

Con: The President's power to impose foreign policy controls would be diminished by all of these proposals. Current law already requires the President to consider and report to Congress on his findings for each of the six criteria listed in the statute. These criteria already require him to consider the economic impact of proposed controls as well as the availability of goods from foreign sources. The President should retain the power, in situations short of a "national emergency", to impose foreign policy controls. The time delay caused by a mandatory notice and comment period would impair the effectiveness of any controls and conceivably would allow businesses to undercut the controls by completing contracts during this interim period. In addition, the marshaling of political forces against the President during this time period would make imposition of controls more difficult. The Congressional veto proposal may well be unconstitutional.

E. Duration

Issue 1: Should foreign policy controls require renewal in a period shorter than one year? (Business)

Present Law: Foreign policy controls expire one year after imposition, unless extended by the President for a period of not more than one year.

Pro: Because of the impact of foreign policy controls and the fluid nature of world conditions, the controls should be reassessed more often than once a year.

Con: This proposal weakens the impact of the control and diminishes the President's foreign policy authority by requiring him to report to Congress more often. Export controls can

CONFIDENTIAL

CONFIDENTIAL

currently be modified or removed in a shorter period if circumstances warrant.

Approve _____

Disapprove XXF. Import Controls

Issue 1: Should import controls be imposed on a country whenever export controls are imposed on that country, subject to such exceptions as the President may prescribe? (Heinz)

Present Law: There are no provisions which mandate imposition of import controls whenever export controls are imposed.

Pro: If U.S. exporters are required to incur economic loss, then the businesses in the affected countries should also share the economic burden of U.S. foreign policy controls. The proposal gives the President an additional tool for implementing U.S. foreign policy.

Con: Political pressure may be brought to bear upon the President to impose import controls or take stronger measures than he feels desirable. Serious foreign relations problems would likely ensue from this proposal.

[Issue Unresolved]

°SIG-IEP Issue]

Approve _____

Disapprove _____

G. Multilateral vs. Unilateral

Issue 1: Should all-unilateral controls be eliminated? (Business)

Present Law: The President has the authority to impose foreign policy controls without regard to whether these controls are adopted by any other government.

Pro: Unilateral controls are ineffective and U.S. businesses should not be required to incur economic losses from such controls.

CONFIDENTIAL

CONFIDENTIAL

Con: U.S. foreign policy should not be entirely dependent on the foreign policy objectives of other countries.

Approve _____ Disapprove XX

III. Short Supply Controls

A. Moakley Amendment (Section 7(e))

Issue 1: Should this provision be deleted which requires a license authorizing the export of refined petroleum products? (ACEP)

Present Law: The Moakley Amendment requires that no refined petroleum product be exported except pursuant to a license and following a 30-day notice to Congress of intent to issue such license.

Pro: The provision is no longer necessary because refined petroleum products are not in short supply. Deleting this provision would allow U.S. refiners to compete more effectively in the world market. Should petroleum products once again become in short supply, the Moakley Amendment is not needed to reimpose export controls.

Con: The present world oil situation could suddenly change, and deletion of the Moakley Amendment could then jeopardize domestic U.S. supply of refined petroleum products. The Northeast region of the country would strenuously oppose this provision.

Approve XX Disapprove _____

B. Alaskan Crude Oil Provision

Issue 1: Should the prohibition on exporting * Alaskan crude oil be ~~deleted or modified~~, thus permitting exports of Alaskan crude oil to Japan?

CONFIDENTIAL

CONFIDENTIAL

Present Law: The provisions relating to crude oil effectively prohibit the export of Alaskan-produced crude oil.

*[°Approved as modified

°Also agreed to delete all specific Short Supply controls from Act. Retain authority to impose such controls]

Pro: The U.S. oil industry and Alaska would prosper from exporting crude to Japan; U.S. national security interests could be served by shifting Japanese energy dependence away from the Soviet Union and to the United States. The proposal would not result in domestic shortfalls because of abundance of worldwide and domestic crude oil supply.

Con: No position should be taken on this issue now because it is currently under study in the International Energy Security Group (IESG) and the SIG-IEP. Deletion of this provision would harm west coast refiners, shippers, and maritime employees.

*Approve xx Disapprove

IV. Organizational Changes

A. DCD Review (Section 10(g))

Issue 1: Should DCD review be expanded to include all goods or technology controlled for national security purposes to any destination (not just proscribed countries)? (DOD)

Present Law: The Secretary of Defense is currently authorized to review any proposed export to any proscribed country (i.e., not free world).

Pro: DOD review as well as DOC review is necessary to insure adequate scrutiny of proposed security-sensitive exports.

Con: The DOD Review would simply duplicate the DOC review and would lengthen the licensing process. Certain key cases requested by DOD are referred to it by DOC for comment. Desired changes in this area are

CONFIDENTIAL

CONFIDENTIAL

*[*Regulations or
MOU issue, not
statutory
*DOD and DOC will
seek to agree on
MOU]

better addressed administratively by MOU or
regulations rather than by statute.

Approve _____ *Disapprove XX

Issue 2: Should DOD be authorized to review all
applications for distribution licenses?
(DOD)

Present Law: The statute does not expressly
grant the Secretary of Defense the authority
to review applications for distribution
licenses. (Distribution licenses are not used
for proscribed countries.)

Pro: DOD review is necessary to assess
potential abuse of distribution licenses which
might lead to diversion of sensitive items to
proscribed countries.

Con: DOD review would simply duplicate the
DOC review and would lengthen the licensing
process. Desired changes in this area are
better addressed administratively by MOU or
regulations rather than by statute. Adminis-
trative changes are, in fact, under review
now.

Approve _____ *Disapprove XX

Issue 3: Should DOD be given the right to veto
export of any goods or technology if DOD
determines "that the export of any goods
or technology will contribute to
strengthening Soviet military capabili-
ties or enable defense priority indus-
tries in the Soviet Union and the Warsaw
Pact to produce items controlled for
national security reasons to the
detriment of the United States?" (DOD)

Present Law: Whenever the Secretary of
Defense determines that exporting an item
would significantly contribute to the military
potential of another country and would create
a risk to our national security, he may
recommend to the President that he disapprove
the export license. If the President

CONFIDENTIAL

CONFIDENTIAL

overrides the Secretary of Defense, he must so report to the Congress.

Pro: The proposed DOD review and veto power is necessary to protect fully the national security interests of the United States.

Con: The President should not be deprived of his current right to be the ultimate decisionmaker with regard to export control matters. This provision is also too broad and would give DOD veto power over exports to all countries and not just review power over exports to proscribed country destinations. The proposal would delay the licensing process.

Approve _____ Disapprove XX

B. Customs Role

Issue 1: Should all enforcement functions be transferred to Customs? (Nunn and Heinz)

Present Law: Enforcement powers are vested in the head of any department or agency exercising any function under the Act. Accordingly, the Secretary of Commerce enforces the EEA, although he has, by regulations, authorized the Customs Service to assist with this enforcement.

Pro: Customs has the expertise, manpower and budget to enforce more effectively than Commerce the export control laws.

Con: Enforcement functions should remain in Commerce because enforcement is more effective when combined in the same agency with the licensing functions. The Office of Export Enforcement (Commerce), unlike the Customs Service, has a single mission enforcement role. The Commerce Department has recently devoted substantial resources to improving its Office of Export Enforcement.

Approve _____ Disapprove _____

[Issue Unresolved

- °SIG-IEP Issue
- °State, Treasury approve
- °Remaining agencies disapprove]

CONFIDENTIAL

CONFIDENTIALC. Office of Strategic Trade

Issue 1: Should a new Office of Strategic Trade (OST) be created? (This would be an independent executive agency whose director would be a member of the N.C.S. The OST would be responsible for administering and enforcing export control laws under the EAA and the Arms Export Control Act.) (Garn)

Present Law: Export trade controls that are the subject of the Export Administration Act are generally vested in the Secretary of Commerce. The authority to control trade in munitions is the responsibility of the Department of State.

Pro: The OST would not be subject to the pro-export bias of the Department of Commerce. Creating a separate agency, and placing its director on the NSC, reflects the importance of export controls to the Administration. Because of its visibility, the OST would be able to attract better qualified personnel.

Con: This new bureaucracy is unnecessary and would be costly. The current interagency review process works well and provides the necessary balance among the competing purposes of the EAA.

*[°Not to be included in Administration bill

°No decision on whether expressly to oppose OST in Hill testimony]

Approve _____

*Disapprove XX

V. MiscellaneousA. Judicial Review

Issue 1: Should the EAA be amended to provide for judicial review of licensing and control decisions. (Business)

Present Law: Persons claiming harm from licensing and control actions taken under the Act may not resort to the courts to obtain judicial review of these actions.

CONFIDENTIAL

CONFIDENTIAL

Pro: There is currently no impartial review of actions taken under the Act. Judicial review is necessary to ensure that the provisions of the Act are fully and properly administered.

Con: Judicial review would encounter severe business confidentiality and classification problems. The licensing process would be slowed considerably due to litigation involvement of licensing personnel. The provision would not be very effective because courts are reluctant to question foreign policy and national security decisions of the Executive. Moreover, it may not be desirable to have the courts reviewing Executive decisions in these areas.

Approve _____ Disapprove XX

B. Licensing

Issue 1: Should the EAA eliminate the license requirement for shipments of non-MCTL goods and technology from the U.S. to COCOM countries, Australia and New Zealand? (Business)

Present Law: These named countries receive no special statutory treatment except for exemption from provisions relating to export of crime control and detection instruments.

Pro: This provision would eliminate delays and loss of profits caused by West-West licensing. The damage to U.S. competitiveness resulting from U.S. licensing of non-MCTL "West-West" trade, outweighs the minimal value to U.S. national security of such licensing. To detect diversion, less stringent certification procedures could be devised.

Con: This provision would eliminate the paper trail necessary to detect diversion. The proposed change can be made administratively by regulation.

Approve _____ *Disapprove XX

*[Can be done by regulation, does not require change in the Act]

CONFIDENTIAL

CONFIDENTIAL

Issue 2: Should a new special license be created for shipments of goods and technology intra-company (Parent-sub, sub-sub)? (Business)

Present Law: The Secretary currently has the authority to require (and so establish) any special license that will assist in the effective implementation of the Act. No special license now exists for intra-company exports.

Pro: Internal company transfers should be subject to minimal regulations. A new less restrictive license would still provide a paper trail of items transferred, but would minimize delays and loss of profits caused by the present system.

Con: This proposal, if desirable, can be done administratively under the current statute. Foreign subsidiaries often operate independently of their parent companies, and may be located in countries whose foreign policy objectives are different from those of the U.S.

*[°Can be done by regulation, does not require change in the Act]

Approve _____ *Disapprove XX

**[°SIG- **C. Anti Boycott
IEP Issue

°USTR
Issue: D. Enforcement and Violations Sections
"Should the Act direct the Departments of Commerce and Treasury to harmonize their respective anti-boycott laws?"

CONFIDENTIAL

CONFIDENTIAL

FEB 28 1983

ISSUES

Extraterritoriality

Issue: Should extraterritorial foreign policy export controls be eliminated except in the case of a declared national emergency?

(Options Paper, p. 11, Issue A.1(B))

Business Protection Against Export Controls

Issue: Should the special protections given to agricultural products be extended to other products?

- contract sanctity
- compensation for losses (or OPIC insurance)
- Congressional veto

(Options Paper, p. 12, Issues B.1., and p. 13, Issue C.1)

Energy Dependence Controls

Issue: Is it U.S. policy that export controls be used to prevent the U.S. and its allies from excessive energy and other critical resource dependence on potential adversaries?

If so, should this policy be expressed in the Act?

(Options Paper, p. 9, Issue 3)

Exports to Embassies

Issue: Should the Act explicitly grant authority to the President to control exports to proscribed country

CONFIDENTIAL

embassies and their affiliates in the United States
as the Secretaries of Commerce and Defense designate?

(This is a modification of the Options
Paper, p. 6, Issue D.1.)

Import Control Authority

Issue: Should the President be given new authority to
control imports in the following circumstances:

- ° when export controls are imposed?
- ° as a penalty against companies who violate U.S.
export laws or COCOM agreements?

(These are modifications of two issues in
the Options Paper: p. 4, Issue 3, and p. 17,
Issue F.1. The proposal has been changed to
apply to companies and not countries.)

Antiboycott

Issue: Should the Act direct the Departments of Commerce and
Treasury to harmonize their respective antiboycott
laws?

Enforcement to Customs

Issue: Should the Act be amended to transfer all enforcement
authority from Commerce to Customs?

(Options Paper, p. 21, Issue B.1)